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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 AMEL DALLUGE,

9 Plaintiff,

10 v.

11 DEPARTMENT OF CORRECTIONS,

12 Defendant.

CASE NO. C10-5077FDB

ORDER DIRECTING PLAINTIFF
TO CURE DEFICIENT
COMPLAINT

13 The Court, having reviewed plaintiff's complaint, (Dkt. # 1), and the balance of the
14 record contained herein, does hereby find and ORDER the following:
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16 Plaintiff complains of lack of medical treatment for his stomach. He names only the
17 Department of Corrections as a defendant. He seeks injunctive relief and monetary damages
18 (Dkt. # 1). Because a § 1983 claim must name a person, and not an entity as a defendant, this
19 court orders that defendant amend the complaint to name a proper party by **April 9, 2010**.

20 A complaint is frivolous when it has no arguable basis in law or fact. Franklin v.
21 Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984). When a complaint is frivolous, fails to state a
22 claim, or contains a complete defense to the action on its face, the court may dismiss an in forma
23 pauperis complaint before service of process under 28 U.S.C. § 1915(d). Noll v. Carlson, 809
24 F.2d 1446, 575 (9th Cir. 1987) (*citing* Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir. 1984)).
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26 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege (1) the conduct
complained of was committed by a person acting under color of state law and (2) the conduct

1 deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the
2 United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other grounds*, Daniels
3 v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged
4 wrong only if both of these elements are present. Haygood v. Younger, 769 F.2d 1350, 1354
5 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

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7 Plaintiff's complaint is deficient because he does not name a person as a defendant. In
8 Will v. Michigan Dept. of State Police, 491 U.S. 48, 71 (1989), the United States Supreme Court
9 specifically held that state government and branches of state government are not "persons" for
10 the purpose of 42 U.S.C. § 1983. The Eleventh Amendment to the United States Constitution
11 formed the basis for the court's decision in that case. The Eleventh Amendment prohibits suit for
12 damages against a state in federal court.

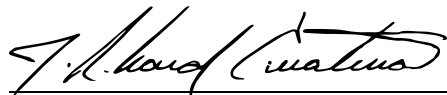
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14 Absent a waiver, a state cannot be sued in federal court for damages. Washington State
15 has not waived immunity or consented to be sued under 42 U.S.C. § 1983 in state or federal
16 court. Rains v. State of Washington, 100 Wn. 2d 660 (1983).

17 Accordingly, this court orders the following:

18 (i) Plaintiff shall seek to cure these deficiencies by filing an amended complaint by
19 no later than **April 9, 2010**. If plaintiff fails to cure these deficiencies the court will recommend
20 dismissal of this matter as frivolous.

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22 (ii) The Clerk is directed to send copies to plaintiff.

23 DATED this 3rd day of March, 2010.

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26 J. Richard Creatura
United States Magistrate Judge

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